

REMARKS

By this Amendment, Applicants have cancelled claims 23 and 32 without prejudice or disclaimer of their subject matter, and amended claims 22, 24-31, and 33-42. Upon entry of this Amendment, claims 22, 24-31, and 33-42 are pending and under current examination. In the Office Action¹, the Examiner took the following actions:

- (a) rejected claims 24, 25, and 40 under 35 U.S.C. § 112, second paragraph;
- (b) rejected claims 22-42 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;
- (c) rejected claims 22-25, 28-34, and 37-42 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Pub. No. 2002/0145982 ("Talpade");
and
- (d) rejected claims 26, 27, 35, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Talpade in view of U.S. Patent Application Pub. No. 2003/0100299 ("Ko").

Applicants respectfully traverse the rejections for the reasons that follow.

Note Regarding the Information Disclosure Statement ("IDS") of May 25, 2006

Applicants note the inadvertent typographical error made in the citation of Talpade, U.S. Patent Application Pub. No. 2002/0145982, in the IDS of May 25, 2006. The IDS of May 25, 2006, inadvertently reversed two digits, and thus incorrectly cited Talpade as U.S. Patent Application Pub. No. 2002/0149582. Since Talpade was

¹ The Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

correctly made of record in the Form PTO-892 accompanying the Office Action, Applicants are not submitting another IDS to correct the citation.

Rejection of Claims 24, 25, and 40 under 35 U.S.C. § 112, second paragraph

Applicants request reconsideration and withdrawal of the 35 U.S.C. § 112, second paragraph, rejection of claims 24, 25, and 40 as being indefinite. See Office Action, pp. 2-3.

Regarding claim 24, the Office Action alleged that “it is unclear what does it mean by ‘simulated user.’” Office Action, p. 2. In response, Applicants have amended claim 24 to remove the word “simulated.”

Regarding claim 25, the Office Action alleged that the terms “guaranteed transfer speed” and “maximum transfer speed” are indefinite, and questioned how to differentiate between these terms. See Office Action, pp. 2-3. In response, Applicants point out the disclosure at p. 10, lines 16-27, which discusses both a guaranteed bit-rate (“guaranteed transfer speed for data that are transmitted . . .”), and a maximum bit-rate (“maximum transfer speed for data that are transmitted . . .”). Applicants’ use of the terms “guaranteed transfer speed” and “maximum transfer speed” would be readily understood by one of ordinary skill in the art when read in light of the specification at, for example, p. 10, lines 16-27. Applicants respectfully note the following portion of the M.P.E.P.:

The examiner’s focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available.

M.P.E.P. § 2173.02.

Therefore, "if the language used by applicant satisfies the statutory requirements of 35 U.S.C. 112, second paragraph, but the examiner merely wants the applicant to improve the clarity or precision of the language used, the claim must not be rejected under 35 U.S.C. 112, second paragraph, rather, the examiner should suggest improved language to the applicant." Id. But, "[i]f applicant does not accept the examiner's suggestion, the examiner should not pursue the issue." Id.

Finally, the Office Action alleged that "claim 40 depend[s] on claim 31, wherein claim 31 is a 'method' claim. However, claim 40 recites 'an object for simulating', which has a different statutory category" Office Action, p. 3. In response, Applicants respectfully point out that claim 31 is not a method claim, but rather is a system claim. That is, claim 40 recites "[a]n object comprising the computer system according to claim 31, for simulating, using the computer system..." and claim 31 recites "[a] computer system for simulating, using the computer, a communications network..." with neither claim being a method claim. Accordingly, this rejection is improper and Applicants request its withdrawal.

The claims therefore fully comply with the provisions of 35 U.S.C. § 112, second paragraph, and meet the threshold requirements of clarity and precision. If, after consideration of the amendments presented herein, the Examiner still has any concerns about the clarity of Applicants' claim language, Applicants respectfully request that the Examiner telephone the undersigned representative to discuss the claim language. Applicants respectfully request withdrawal of this rejection.

Rejection of Claims 22-42 under 35 U.S.C. § 101

The Office Action rejected claims 22-42, alleging that the claims are directed to non-statutory subject matter. See Office Action, pp. 3-4. Without conceding to the

allegations in the Office Action, Applicants have amended the claims, where appropriate, to recite a "computer" to overcome this rejection. Accordingly, Applicants deem this rejection overcome, and respectfully request its withdrawal.

Rejection of Claims 22-25, 28-34, and 37-42 under 35 U.S.C. § 102(b)

Applicants respectfully request reconsideration and withdrawal of the rejection of claims 22-25, 28-34, and 37-42 under 35 U.S.C. § 102(b) as being anticipated by Talpade. See Office Action, pp. 4-9. In order to establish anticipation under 35 U.S.C. § 102, the Examiner must show that each and every element as set forth in the claim is found, either expressly or inherently described, in Talpade. See M.P.E.P. § 2131.

Talpade, however, does not disclose each and every element of Applicants' claimed invention. Specifically, Talpade does not disclose at least Applicants' claimed:

dynamically configuring said objects to simulate the supply of the service corresponding to said selectively identified quality of service profile; and

inserting, for at least one network user, a respective parameter related to a particular respective quality of service profile, wherein the steps are applied for simulating networks comprising mobile terminals cooperating with blocks or network devices, and wherein said parameter is transferred from said terminal to said block or network device

as recited in amended independent claim 22, with similar recitations in amended independent claim 31.

Talpade generally teaches a method for provisioning a network by identifying classes of traffic. See Talpade, Abstract. Talpade teaches that an ISP Administrator may identify classes of traffic, which may have one or more quality of service (QoS) criteria. See Talpade, ¶ [0023]. The simulator may simulate classes of traffic and determine QoS mechanisms, that is, QoS algorithms for controlling network resources.

See Talpade, ¶ [0025]. Simulation results may be used to help determine the QoS mechanism to be used in the physical network. See Talpade, ¶ [0026].

The first discussion of simulation in Talpade ends after ¶ [0027]. ¶ [0028] of Talpade begins a discussion of operation of a real, physical network. When rejecting dependent claims 28-30 and 37-39, which contain recitations similar to the recitations of amended independent claims 22 and 31, the Examiner cited to ¶¶ [0028] and [0030] of Talpade. These paragraphs, however, teach what happens in the physical network, and not what happens in simulation. Moreover, even if Talpade suggested performing the steps of ¶¶ [0028] and [0030] in simulation, which it clearly does not, Talpade does not teach all of the recitations of amended claims 22 and 31. First, Talpade does not disclose mobile terminals at all (as recited in claims 22 and 31), but instead discusses fixed computers. See Talpade, ¶ [0028] and Fig. 1. Further, Talpade discloses configuring network resources using QoS mechanisms. See Talpade, ¶ [0030]. But, as explained above, QoS mechanisms are algorithms, and are distinct from QoS criteria or QoS parameters. Accordingly, Talpade does not disclose or suggest at least:

dynamically configuring said objects to simulate the supply of the service corresponding to said selectively identified quality of service profile; and

inserting, for at least one network user, a respective parameter related to a particular respective quality of service profile, wherein the steps are applied for simulating networks comprising mobile terminals cooperating with blocks or network devices, and wherein said parameter is transferred from said terminal to said block or network device

as recited amended independent claim 22 (emphases added), with similar recitations in amended independent claim 31.

Since Talpade fails to disclose each and every element of Applicants'

independent claims 22 and 31, Talpade does not anticipate Applicants' independent claims 22 and 31. Independent claims 22 and 31 should therefore be allowable. Claims 24, 25, 28-30, 33, 34, and 37-42 depend from either independent claim 22 or 31, and should also be allowable at least by virtue of their dependence from an allowable base claim. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection of Dependent Claims 26, 27, 35, and 36 under 35 U.S.C. § 103(a)

Applicants respectfully request reconsideration and withdrawal of the rejection of claims 26, 27, 35, and 36 under 35 U.S.C § 103(a) as being unpatentable over Talpade in view of Ko.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007). In particular, the Office Action has not properly determined the scope and content of the prior art, at least because it incorrectly interpreted the content of Talpade and Ko. Specifically, neither Talpade nor Ko teaches what the Office Action attributes to them.

Applicants have previously established herein that Talpade does not teach or suggest each and every element of independent claims 22 and 31. The Office Action's application of Talpade alone or in combination with Ko against the dependent claims does not cure the deficiencies of Talpade as to independent claims 22 and 31. Moreover, Ko discloses a method of testing a physical digital mobile network using

physical mobile devices in the testing, i.e., not computer simulation. See Ko, Abstract, ¶ [0060], and claim 1.

Accordingly, Talpade in view of Ko, taken alone or in combination, also fails to teach or suggest at least Applicants' above-quoted claim recitations. The Office Action's allegations as to Talpade and Ko with regard to the dependent claims does not address the failure of Talpade to teach or suggest each and every element of the independent claims, as explained in the previous section. Dependent claims 26, 27, 35, and 36 should therefore be allowable at least by virtue of their dependence from base claim 22 or 31. Applicants therefore request withdrawal of the rejection.

Conclusion

In view of the foregoing, Applicants request reconsideration of the application and withdrawal of the rejections. Pending claims 22, 24-31, and 33-42 are in condition for allowance, and Applicants request a favorable action.

If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: June 15, 2009

By: 

David M. Longo
Reg. No. 53,235

/direct telephone: (571) 203-2763/